

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CORAZON H. ZAMBRANO,

Plaintiff,

No. C 06-02565 JSW

v.

JOHN E. POTTER, Postmaster General of the  
United States,

Defendant.

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

This matter comes before the Court upon consideration of the motion for summary judgment filed by Defendant John E. Potter, Postmaster General of the United States (“Defendant”). Having considered the parties’ pleadings, relevant legal authority, and having had the benefit of oral argument, the Court HEREBY GRANTS Defendant’s motion.

**FACTUAL BACKGROUND**

Plaintiff Corazon H. Zambrano (“Plaintiff”) alleges that she was terminated from her employment with the United States Postal Service (“USPS”) based on her age (over 40) or harassment due to national origin (Filipino).<sup>1</sup> Plaintiff was hired as a casual employee on March 31, 2003 as a mail processor. (Declaration of Abraham Simmons (“Simmons Decl.”), Ex. 1.) At the time of her removal on October 10, 2003, Plaintiff was working at the North Peninsula Delivery & Distribution Center in Burlingame, California. (Declaration of Glorina

<sup>1</sup> Although the complaint filed in this matter does not allege discrimination based on national origin, it appears that Plaintiff did file a complaint before the Equal Employment Opportunity Commission alleging that she was discriminated against on the bases of national origin and age. (See Complaint at ¶ 5, Attachment 2 at 1.) Because Plaintiff appears before this Court *pro se*, the Court will allow a liberal construction of the complaint and address Plaintiff’s allegations of discrimination based on both national origin and age.

1 Macabbabad (“Macabbabad Decl.”), at ¶ 1; Plaintiff’s Statement of Facts (“Statement”) filed  
2 June 8, 2007, at 1.) The San Francisco District’s USPS maintains an explicit Zero Tolerance  
3 Policy (“Policy”) which assures all employees the right to perform their assigned duties in an  
4 atmosphere free of assaults, threats and other acts of workplace violence. (Macabbabad Decl. at  
5 ¶ 4, Ex. 2.) The Policy gives notice to employees that any violation may lead to discipline up to  
6 and including removal from the Postal Service. (*Id.*) The Employee Labor Relations Manual  
7 also prohibits conduct that creates obnoxious or unpleasant working conditions. (*Id.* at ¶ 4, Ex.  
8 1.)

9 The incident that led to Plaintiff’s removal occurred on October 6, 2003. (*Id.* at ¶¶ 6-8,  
10 Exs. 3, 4.) Apparently, Plaintiff engaged in a verbal altercation with a co-worker by the name  
11 of Ms. Estimo. According to Ms. Estimo’s statement of the incident, Plaintiff became angry  
12 and started calling Ms. Estimo names, stood close to her and threatened to hit her. (*Id.*, Ex. 3.)  
13 Finally, Plaintiff backed out of the altercation and said she could not hit Ms. Estimo in the  
14 building because she would risk getting fired, but would wait for her outside. (*Id.*) Another  
15 witness to the incident, who refused to give a statement, indicated to the women’s supervisor,  
16 Ms. Macabbabad, that the two co-workers were having a discussion during a break in which  
17 Plaintiff became upset, walked around to Ms. Estimo’s side of the table and told her she wanted  
18 to hit her but would wait for her outside and settle it there. (*Id.*) When Ms. Macabbabad  
19 interviewed Plaintiff just after the incident, Plaintiff admitted that she had gotten upset by  
20 feeling that Ms. Estimo had talked down to her, and responded by letting her know that she  
21 wanted to hit her. Plaintiff also admitted at that time that she was aware of the Zero Tolerance  
22 Policy and Ms. Macabbabad indicated that she would be terminated. (*Id.*)

23 In lieu of a formal opposition to the motion, Plaintiff submitted a document entitled  
24 ‘Summary of Facts.’ The Court construes this summary as an opposition to the pending motion.  
25 Plaintiff indicates that she did in fact threatened Ms. Estimo, but states that Ms. Estimo had  
26 threatened her and that all of the employees “at that time were against [Plaintiff] for reasons that  
27 [she is] not fully aware of.” (Statement at 1.) In addition, Plaintiff’s complaint alleges that  
28 someone, likely one of Plaintiff’s supervisors, called her “old lady.” (Complaint at ¶ 6.)

1 The Court shall address additional facts as necessary in its analysis.

2  
3 **ANALYSIS**

4 **A. Legal Standards Applicable to Motions for Summary Judgment.**

5 A principal purpose of the summary judgment procedure is to identify and dispose of  
6 factually unsupported claims. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986).

7 Summary judgment is proper when the “pleadings, depositions, answers to interrogatories, and  
8 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to  
9 any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R.  
10 Civ. P. 56(c). “In considering a motion for summary judgment, the court may not weigh the  
11 evidence or make credibility determinations, and is required to draw all inferences in a light  
12 most favorable to the non-moving party.” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9<sup>th</sup> Cir.  
13 1997).

14 The party moving for summary judgment bears the initial burden of identifying those  
15 portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine  
16 issue of material fact. *Celotex*, 477 U.S. at 323. An issue of fact is “genuine” only if there is  
17 sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v.*  
18 *Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A fact is “material” if it may affect the  
19 outcome of the case. *Id.* at 248. If the party moving for summary judgment does not have the  
20 ultimate burden of persuasion at trial, that party must produce evidence which either negates an  
21 essential element of the non-moving party’s claims or that party must show that the non-moving  
22 party does not have enough evidence of an essential element to carry its ultimate burden of  
23 persuasion at trial. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9<sup>th</sup> Cir.  
24 2000). Once the moving party meets his or her initial burden, the non-moving party must go  
25 beyond the pleadings and, by its own evidence, “set forth specific facts showing that there is a  
26 genuine issue for trial.” Fed. R. Civ. P. 56(e).

27 In order to make this showing, the non-moving party must “identify with reasonable  
28 particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275,

1 1279 (9th Cir. 1996). In addition, the party seeking to establish a genuine issue of material fact  
2 must take care to adequately point a court to the evidence precluding summary judgment  
3 because a court is “not required to comb the record to find some reason to deny a motion for  
4 summary judgment.” *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1029 (9th  
5 Cir. 2001) (quoting *Forsberg v. Pacific Northwest Bell Telephone Co.*, 840 F.2d 1409, 1418  
6 (9th Cir. 1988)). If the non-moving party fails to point to evidence precluding summary  
7 judgment, the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

8 **B. Defendant Is Entitled to Summary Judgment on the National Origin**  
9 **Discrimination Claim.**

10 Plaintiff argues that the decision to remove her from the USPS was motivated by her  
11 national origin. Pursuant to Title VII, it is unlawful for an employer “to discriminate against  
12 any individual with respect to his compensation, terms, conditions, or privileges of employment  
13 because of such individual’s ... national origin ....” 42 U.S.C. § 2000e-2(a)(1). In general,  
14 claims of discrimination are evaluated under the framework set forth by the United States  
15 Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under that  
16 framework, “the burden of production first falls on the plaintiff to make a *prima facie* case of  
17 discrimination.” *Coghlan v. American Seafoods Co.*, 413 F.3d 1090, 1094 (9th Cir. 2005).

18 If the plaintiff establishes a *prima facie* case, the burden then shifts to the defendant to  
19 present evidence “sufficient to permit the factfinder to conclude that the employer had a  
20 legitimate nondiscriminatory reason for the adverse employment action.” *Id.* (citing *St Mary’s*  
21 *Honor Center v. Hicks*, 509 U.S. 502, 506-07 (1993)). If the employer meets its burden, “the  
22 *McDonnell Douglas* framework drops out of the picture entirely, and the plaintiff bears the full  
23 burden of persuading the factfinder that the employer intentionally discriminated against him.”  
24 *Id.* That is, the plaintiff bears the burden of showing that the employer’s reason for the adverse  
25 employment action was pretextual. *Vasquez*, 349 F.3d at 640.

26 As set forth above, Defendant asserts that the decision to terminate Plaintiff from the  
27 USPS was due to her violation of the Policy. Even assuming that Plaintiff could satisfy the  
28 minimal burden necessary to establish a *prima facie* case of discrimination based on national  
origin, the Court concludes that Defendant is entitled to summary judgment because Plaintiff

1 has not met her burden to show that Defendant's reasons for terminating her were a pretext. A  
2 plaintiff may "show pretext directly, by showing that discrimination more likely motivated the  
3 employer, or indirectly, by showing that the employer's explanation is unworthy of credence."  
4 *Id.* at 641; *see also Coghlan*, 413 F.3d at 1094-95. Plaintiff has proffered no direct or  
5 circumstantial evidence of discrimination based on national origin. To defeat Defendant's  
6 motion, Plaintiff must present "specific and substantial" evidence that Defendant's decision to  
7 terminate her is a pretext. *See Wallis v. J.R. Simplot*, 26 F.3d 885, 890 (9th Cir. 1994).

8 In *Wallis*, the Ninth Circuit noted that although a plaintiff can establish a *prima facie*  
9 case of discrimination with minimal evidence, once the *McDonnell Douglas* presumption falls  
10 away, plaintiff must do more. *Wallis*, 26 F.3d at 892; *see also Wilborn v. Ashcroft*, 222 F.  
11 Supp. 2d 1192, 1197 (S.D. Cal. 2002) (granting summary judgment because plaintiff did no  
12 more than rely on *prima facie* case and deny credibility of the defendant's witnesses). In  
13 *Wallis*, the plaintiff attempted to rebut defendant's legitimate reasons for terminating him by  
14 relying on "the same proof he offered to establish his *prima facie* case" of age discrimination  
15 and retaliation. *Wallis*, 26 F.3d at 892. Because the plaintiff offered "no additional proof of age  
16 discrimination either direct, circumstantial or statistical," the court concluded the district court  
17 correctly granted summary judgment in favor of the defendant. *Id.*; *see also McDonnell*  
18 *Douglas*, 411 U.S. at 804-05 (noting that evidence relevant to a showing of pretext may consist  
19 of similarly situated employees outside the protected class being treated differently or evidence  
20 of defendant's policy and practices with respect to minority employment, such as statistics  
21 showing a general pattern of discrimination).

22 There is no competent evidence in the record from which the Court could draw the  
23 inference that Plaintiff was terminated due to her national origin. *See Matsushita Elec. Indus.*  
24 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (party opposing summary judgment cannot  
25 rest on "metaphysical doubt" as to the material facts). "A plaintiff's belief that a defendant  
26 acted from unlawful motive, without evidence supporting that belief, is no more than  
27 speculation or unfounded accusation about whether the defendant really did act from an  
28 unlawful motive." *Carmen*, 237 F.3d at 1028; *see also Bradley v. Harcourt, Brace & Company*,

104 F.3d 267, 270 (9th Cir. 1996) (affirming summary judgment on sexual discrimination claim where plaintiff produced no “specific, substantial evidence of pretext” to rebut defendant’s explanations for termination and relied primarily on her subject beliefs as to her competence).

Having failed to raise a disputed fact demonstrating that Defendant’s articulated reason for termination is pretextual, either directly or indirectly, the Court GRANTS summary judgment on Plaintiff’s claims for discrimination based on national origin.

**C. Defendant is Entitled to Summary Judgment on the Age Discrimination Claim.**

Plaintiff also brings a claim for age discrimination. The Age Discrimination in Employment Act (“ADEA”) prohibits “arbitrary age discrimination in employment.” 29 U.S.C. § 621(b). The ADEA makes it “unlawful for an employer ... to fail or refuse to hire or to discharge any individual [who is at least 40 years of age] ... because of such individual’s age.” *Id.* at §§ 623(a), 631(a). To succeed on her claim, Plaintiff must demonstrate that age actually motivated Defendant’s decision to terminate her. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 141 (2000).

Plaintiff again bears the initial burden of establishing a *prima facie* case of discrimination. If she establishes a *prima facie* case, the burden then shifts to Defendant to articulate a legitimate nondiscriminatory reason for its employment decision. Then, in order to prevail, Plaintiff must demonstrate that Defendant’s alleged reason for the adverse employment decision is a pretext for another motive which is discriminatory. *See Schnidrig v. Columbia Machine, Inc.*, 80 F.3d 1406, 1409 (9th Cir. 1996) (citation omitted). Plaintiff may establish a *prima facie* case either by direct evidence of discriminatory intent or by circumstantial evidence demonstrating she was “(1) a member of the protected class (age 40-70); (2) performing [her] job in a satisfactory manner; (3) discharged; and (4) replaced by a substantially younger employee with equal or inferior qualifications.” *See Schnidrig*, 80 F.3d at 1410; *see also Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 917 (9th Cir. 1997).

Plaintiff asserts that Defendant discriminated against her because of her age based upon a single remark alleged in the complaint in which some unidentified person, most likely one of her supervisors, called her an “old lady.” (Complaint at ¶ 6.) Again, assuming Plaintiff has

1 made out a *prima facie* case of age discrimination, Defendant has identified legitimate business  
2 reasons for terminating the customer relationship with him. Violation of the Zero Tolerance  
3 Policy is sufficient to constitute a legitimate, nondiscriminatory business reason for termination.

4 The burden then shifts to Plaintiff to demonstrate that the reason for her termination was  
5 a pretext for another, discriminatory motive. To demonstrate pretext, the only evidence before  
6 the Court is Plaintiff's single allegation in her complaint that someone called her an "old lady."  
7 (Complaint at ¶ 6.) The Ninth Circuit has held that similar kinds of statements were merely  
8 "stray" remarks and, thus, were insufficient to create a genuine issue of fact regarding age  
9 discrimination. *See Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1438-39 (9th Cir. 1990)  
10 (holding that hiring supervisor's statement that he hired a younger employee over plaintiff  
11 because he was "bright, intelligent, knowledgeable young man" was a stray remark insufficient  
12 to create an inference of age discrimination); *see also Coleman v. Quaker Oats Co.*, 232 F.3d  
13 1271, 1284-85 (9th Cir. 2000) (holding that employer's statement that plaintiff was not "young  
14 and promotable" did not give rise to suspicions of age discrimination); *Nesbit v. Pepisco*, 994  
15 F.2d 703, 705 (9th Cir. 1993) (holding that employer's statement that "[w]e don't necessarily  
16 like grey hair" did not support inference of discriminatory motive). Plaintiff's supervisor's  
17 alleged statement, an isolated instance, does not create an inference of age discrimination.  
18 Accordingly, this allegation is insufficient to create a genuine issue of fact regarding pretext.

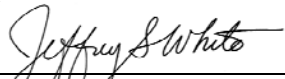
19 Having failed to raise a disputed fact demonstrating that Defendant's articulated reason  
20 for termination is pretextual, either directly or indirectly, the Court GRANTS summary  
21 judgment on Plaintiff's claims for discrimination based on age.

## 22 CONCLUSION

23 For the foregoing reasons, Defendant's motion for summary judgment is GRANTED.  
24 Judgment shall be entered in favor of Defendant and against Plaintiff.

25 **IT IS SO ORDERED.**

26 Dated: July 2, 2007

27   
28 JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CORAZON H. ZAMBRANO,  
Plaintiff,

Case Number: CV06-02565 JSW

**CERTIFICATE OF SERVICE**

v.

JOHN E. POTTER et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 2, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: July 2, 2007

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk